

Internal Revenue Service

Department of the Treasury
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June 04, 2012

LEGEND

X =

Y =

A =

Trust =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear _____ :

This letter responds to a letter dated February 1, 2012 and subsequent correspondence submitted on behalf of X by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated on Date 1 under the laws of State. X's subsidiary, Y, is also incorporated under the laws of State. X timely elected to be treated as an S corporation effective Date 2 and elected to treat Y as a qualified subchapter S subsidiary (QSub) effective Date 2.

A, the sole shareholder of X at that time, created Trust on Date 3. On Date 4, A transferred all of the voting stock in X to Trust. Trust was a grantor trust wholly owned by A under § 671. A died on Date 5. X's S corporation status terminated on Date 6 when the trustees failed to make an election to treat Trust as an electing small business trust (ESBT).

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent. X further represents that X and its shareholders have filed their federal income tax returns consistent with having a valid S corporation election in effect for all taxable years since X elected to be an S corporation. X and its shareholders consent to making any adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

LAW & ANALYSIS

Section 1361(a)(1) of the Code provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(e) defines an ESBT. Section 1361(e)(1)(A) provides that, except as provided in § 1362(e)(1)(B), an ESBT means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in § 170(c)(2), (3), (4), or (5), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential current

beneficiary, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or was terminated under §§ 1362(d)(2), (3), or 1362(b)(3)(C); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness, steps were taken so that the corporation is a small business corporation or a qualified subchapter S subsidiary; and (4) the corporation and each person who was a shareholder in the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation or a qualified subchapter S subsidiary) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation or a qualified subchapter S subsidiary during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election and Y's QSub election terminated on Date 6 and that these terminations were inadvertent within the meaning of § 1362(f). We further conclude that, pursuant to the provisions of § 1362(f), X will be treated as an S corporation and Y will be treated as a QSub effective Date 2 and thereafter, provided that such elections are not otherwise terminated under § 1362(d). Trust will be treated as an ESBT from Date 6, provided that Trust is otherwise eligible to be an ESBT.

This ruling is contingent upon the trustees of Trust filing a properly completed ESBT election effective Date 6 with the appropriate service center within 120 days following the date of this letter and upon Trust filing any necessary amended returns and paying any additional tax and interest due within 120 days following the date of this letter. A copy of this letter should be attached to the ESBT election and any relevant amended return.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of

the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning whether X otherwise qualifies as an S corporation, whether Y otherwise qualifies as a QSub, whether Trust otherwise qualifies as a QSST, or whether any other shareholder of X is a permissible S corporation shareholder.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: